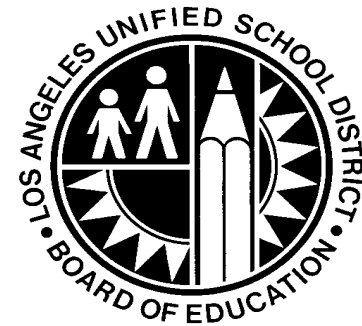


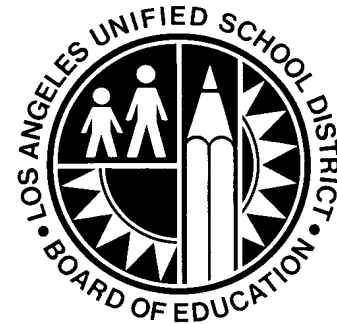
LOS ANGELES UNIFIED SCHOOL DISTRICT
FACILITIES SERVICES DIVISION
FACILITIES CONTRACTS

**LABOR COMPLIANCE
PROGRAM**



SEPTEMBER 2002

**LOS ANGELES UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM**



PREPARED BY THE
LABOR COMPLIANCE PROGRAM STAFF

SEPTEMBER 2002

LOS ANGELES UNIFIED SCHOOL DISTRICT

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LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

TABLE OF CONTENTS

Page

Introduction..... 1

I. Public Works Subject to Prevailing Wage Laws..... 3

A. Types of Contracts Subject to Prevailing
Wage Requirements..... 1

B. Limited Exemption from the Requirement to
Pay Prevailing Wages..... 4

C. Applicable Dates for Enforcement of the
Labor Compliance Program..... 5

**II. Competitive Bidding on District Public Works
Contracts..... 6**

III. Job Start Meeting..... 8

IV. Review of Certified Payroll Records (CPRs)..... 9

A. Certified Payroll Records Required..... 13

B. Apprentices..... 17

C. Audit of Certified Payroll Records..... 19

V. Reporting of Willful Violations to the Labor Comissioner.....	20
A. For Failure to Comply with Prevailing Wage Rate Requirements.....	20
B. For Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work.....	21
C. For Failure to Submit Certified Payroll Records.....	21
D. For Failure to Pay Fringe Benefits.....	21
E. For Failure to Pay the Correct Apprentice Rate and/or Misclassification of Workers as Apprentices.....	21
F. For the Taking of Kickbacks.....	22
VI. Enforcement Action.....	23
A. Duty of the Awarding Body.....	19
B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.....	23
C. Withholding for Violation of the Requirement to Prevailing Wages.....	25
D. Forfeitures Requiring Approval by the Labor Commissioner.....	28
E. Determination of Amount of Forfeiture by the Labor Commissioner.....	30
F. Deposits of Penalties & Forfeitures Withheld.....	33

G. Debarment Policy.....	34
VII. Appeals of a Labor Compliance Program Enforcement Action.....	36
A. Appeal Process.....	36
B. Determination and Ruling on the Appeal by the Director of the Department of Industrial Relations (DIR).....	38
VIII. Priority Distribution of Forfeited Sums.....	39
A. Withholding of Forfeited Sums.....	39
B. Disposition of Forfeited Sums.....	39
IX. Outreach Activities.....	41
A. Providing Information to the Public.....	41
B. Inservicing Management on the Labor Compliance Program.....	42
X. Annual Reports.....	44
A. Annual Report on Prevailing Wage Monitoring to the LAUSD Superintendent and School Board.....	44
B. Annual Report on the LAUSD Labor Compliance Program to the Director of the Department of Industrial Relations.....	45

ATTACHMENTS..... 47

A. Checklist of Labor Law Requirements to Review
at Job Start Meetings..... 48

B. Audit Record Form..... 55

INTRODUCTION

The Los Angeles Unified School District issues this Labor Compliance Program manual for the purpose of identifying its policy relative to the responsibilities and procedures applicable to the labor compliance provisions of state and federally- funded construction contracts. This Labor Compliance Program contains the labor compliance standards required by state and federal laws, regulations, directives, as well as School District policies and contract provisions.

The California Labor Code Section 1770 et seq. and Education Code Section 39321 require that building trade contractors on public works pay their workers based on the prevailing wage rates, which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In February 1985, the Los Angeles Unified School District began administering a program for monitoring the prevailing wage rates paid to construction workers on public works projects throughout the District. This Program assures the District that all contractors and subcontractors comply with prevailing wage and certified payroll record laws pursuant to the Labor Code Sections 1710 thru 1861.

On September 7, 1993, the Board of Education of the Los Angeles Unified School District adopted the Labor Compliance Program. On December 7, 1996, this Program received final approval from the Labor Commissioner of the State of California.

In establishing this Labor Compliance Program, the District adheres to the statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. Further, it is the intent of the District to actively enforce this Labor Compliance Program wherein the District construction sites are monitored for the payment of prevailing wage rates and, wherein those contractors having workers on District sites routinely submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

Questions regarding the District's Labor Compliance Program should be directed to Ms. Charla Curtis, Labor Compliance Coordinator, Los Angeles Unified School District, Facilities Contracts, Labor Compliance Program, P.O. Box 512298, Los Angeles, CA 90051-0298.

Questions regarding the California Labor Code, including issues relating to this Labor Compliance Program, should be directed to Mr. Arthur S. Lujan, California State Labor Commissioner, Department of Industrial Relations, Division of Labor Standards Enforcement, 455 Golden Gate Avenue, 9th Floor, San Francisco CA 94102.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

SECTION I.

PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771, and include, but are not limited to, such types of work performed under contract as construction, alteration, demolition or repair. The Division of Labor Statistics and Research (DLSR) redetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Prevailing Wage Requirements Apply

As provided in Labor Code Section 1771.5, an awarding body Labor Compliance Program (LCP) as approved by the Director of the Department of Industrial Relations, shall apply to public works contracts that require the payment of prevailing wage rates and shall include all new construction contracts over \$25,000 and all contracts over \$15,000 when the project is for alteration, demolition, repair, or maintenance.

B. Limited Exemption from the Requirement to Pay
Prevailing Wages

Upon election of a Labor Compliance Program (LCP) for the Los Angeles Unified School District, there shall be a limited exemption from the requirement to pay prevailing wage rates for any public works project of \$25,000 or less, when the project is for construction work; or for \$15,000 or less, when the project is for alteration, demolition, repair or maintenance work.

With the District's initiation and enforcement of its LCP pursuant to Labor Code Section 1771.5, all construction contracts under \$25,000 and all District maintenance contracts under \$15,000 would be included in the limited exemption from the legal requirement to pay prevailing wages.

The District shall require that all limited exemption projects for construction, alteration, demolition, repair or maintenance work be identified as such in all bid advertisements and construction contracts. Moreover, if the amount of a limited exemption contract subject to this Section is changed, and, as a result, exceeds the

applicable dollar limits under which the payment of the prevailing wage rates is not required, those workers employed on the contract (after the amount due the contractor has reached the applicable limit) shall be paid at the prevailing wage rates.

C. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body Labor Compliance Programs is established by Section 16425 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the Labor compliance Program until after the Program has received initial or final approval. Moreover, the limited exemption from the payment of prevailing wages pursuant to Labor Code Section 1771.5(a) does not apply to any such contract until after the LCP has received initial or final approval.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

Section II.

COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS

The District publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. Further information regarding the requirements of the District's bidding process may be obtained in the "Bidder's Handbook" distributed by the Facilities Contracts Administration.

All District bid advertisements (or bid invitations) and construction contracts shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code.

All contractors responding to the bid advertisement must obtain and review plans for the public works project as well as attend a mandatory Job Walk meeting (Pre-Bid meeting). This meeting provides an opportunity for the Labor Compliance Program (LCP) representative to explain the District's Labor Compliance Program and prevailing wage requirements to contractors interested in bidding on the projects. It also affords the contractors ample notice of the prevailing wage and certified payroll record

requirements so that they may incorporate the proper labor costs into their estimates and bid amounts.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

SECTION III.

JOB START MEETING

After the District awards the public works contract and prior to the commencement of the work, a mandatory Job Start meeting (Pre-Job conference) shall be conducted. The Job Start meeting is attended by the prime contractor for public works and the subcontractors that were listed in its bid documents.

At that meeting, the LCP representative shall discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the record keeping responsibilities, the requirement for the reporting of certified payroll records to the District, state apprenticeship requirements, and the prohibition against discrimination in employment.

The LCP representative shall give the prime contractor and each subcontractor a Checklist of Labor Law Requirements (presented in Attachment A on pages 43 to 47) and shall discuss in detail the following checklist topics:

1. The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;
2. The contractor's and subcontractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;
3. The penalties for failure to pay prevailing wages (for nonexempt projects) and employ apprentices, including forfeitures and debarment under Labor Code Sections 1775, 1813, and 1777.7;
4. The requirement to maintain and submit copies of certified payroll records to the District on a weekly basis, pursuant to Labor Code Section 1776 and the District's contract, and penalties for failure to do so under Labor Code Section 1776(l) [this requirement includes and applies to all subcontractors performing work on District projects even if their portion of the work is less than one half of one percent of the total amount of the contract] ;
5. The prohibition against employment discrimination under Labor Code Sections 1735 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended;

6. The prohibition against accepting or extracting kickbacks from employee wages under Labor Code Section 1778;
7. The prohibition against accepting fees for registering any person for public works under Labor Code Section 1779, or for filing work orders on public works under Labor Code Section 1780;
8. The requirement to list all subcontractors that are performing more than one-half of one percent of the total amount of the contract, pursuant to Government Code Section 4100 et seq.;
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, also see Business and Professions Code Section 7000 et seq.;
10. The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;
11. The requirement that the contractor and subcontractors be properly insured for Workers Compensation under Labor Code Section 1861;

12. The requirement that the contractor abide by the Occupational Safety and Health laws and regulations that apply to the particular construction project; and
13. The prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the LCP Representative relative to any of the Labor Law Requirements. The Checklist of Labor Law Requirements will then be signed by the prime contractor's representative, subcontractor's representative, and the District's LCP representative.

At the Job Start meeting, the LCP representative shall present the prime contractor with two (2) copies of the District's "LCP package" containing a copy of the approved Labor Compliance Program manual, the checklist of Labor Law Requirements to review at Job Start meetings, "General Prevailing Wage Determinations," blank certified payroll record forms for use by prime contractors and subcontractors, blank fringe benefits statements, State apprenticeship requirements, and a copy of that portion of the Labor Code relating to the prevailing wages (Labor Code, Part 7, Public Works and Public Agencies, Chapter 1, Sections 1720 to 1861).

It will be the prime contractor's responsibility to furnish copies of the "LCP package" to all listed subcontractors and to any substituted subcontractors.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

Section IV.

REVIEW OF CERTIFIED PAYROLL RECORDS

A. Certified Payroll Records Required

The contractor shall maintain payrolls and basic records (timecards, cancelled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all tradesworkers at the District's project sites. Such records shall contain the name, address and social security number of each worker, his or her classification, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

1. Submission of Certified Payroll Records

The contractor shall submit weekly certified payroll records to the Los Angeles Unified School District, Labor Compliance Program. The prime contractor shall be

responsible for the review and submission of copies of payrolls of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations and that the classifications set forth for each employee conform with the work performed.

Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Program at any time and shall be provided within 10 days following the receipt of the request.

2. Full Accountability

The name, address and social security number of every individual, laborer or craftsperson contributing materially to the project must appear on the payroll. The basic concept is that the employer that pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeship craft. Owner operators will be reported by the contractor employing

them and rental equipment operations will be reported by the rental company that is actually paying the worker's wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually performed. The contractor shall make the records required under this section available for inspection by an authorized representative of the District and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

3. Responsibility for Subcontractors

The prime contractor shall be responsible for ensuring that the labor standards provisions are followed by its subcontractors. Moreover, the prime contractor is responsible for the Labor Code violations of its subcontractors.

4. Payments to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts which are due

and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be

paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day and 40 hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage determination.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall be not greater than the ratio permitted to the contractor as to its entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed. An apprentice who is registered and has worked outside of the prescribed geographic area is not qualified to receive the apprentice rate and must be paid the journey level rate.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in nonapprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with the California Labor Code 1777.5 requires all public works contractors and subcontractors to:

1. Apply for a Certificate of Approval for the employment and training of apprentices for each craft or trade;
2. Employ apprentices on the public works project in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than (1) apprentice hour to each five (5) journeyperson hours;

3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

C. Audit of Certified Payroll Records

Audits shall be conducted routinely by the Labor Compliance Program and shall also be conducted at the request of the Labor Commissioner to determine whether all tradesworkers on project sites have been paid according to the prevailing wage rates.

The audit record form that is presented in Attachment B (on pages 55-57) demonstrates the sufficient detail that is required to verify compliance with the Labor Code requirements.

LOS ANGELES UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM

SECTION V.
REPORTING OF WILLFUL VIOLATIONS TO THE LABOR
COMMISSIONER

If an investigation reveals that a willful violation of the Labor Code has occurred, the Labor Compliance Program shall make a written report to the Labor Commissioner which shall include (1) an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked, and (2) the classification of workers employed on the construction contract. Six (6) types of willful violations are reported as follows:

A. For Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and District contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rate, fringe benefits and/or employer payments are paid at a rate less than stipulated.

B. For Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work, underreporting the head count, stating that the proper prevailing wage rate was paid when it in fact was not, misclassifying the work performed by the worker, and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records.

C. For Failure to Submit Certified Payroll Records

The contractors and subcontractors shall have 10 days upon notification by the LCP Representative in which to comply with the requirement for weekly submission of payroll records and/or to correct inaccuracies or omissions that have been detected by review of records.

D. For Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate.

Failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

E. For Failure to Pay the Correct Apprentice Rate and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

F. For the Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

SECTION VI.

ENFORCEMENT ACTION

A. Duty of the Awarding Body

The Los Angeles Unified School District, as the awarding body having an approved LCP, has a duty to the Director of the Department of Industrial Relations to enforce the Labor Code public works requirements (Chapter 1 of Part 7 of Divisions 2 and 3 of the Labor Code) and the procedural regulations of the Department of Industrial Relations in a manner consistent with the practice of the Title 8, California Code of Regulations, Section 16000, et seq.

B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

1. "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the

violation and reference made to its rights under Labor Code Section 1729;

A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law;

2. "Contracts" except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding, pursuant to the Labor Code, Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;
3. "Delinquent payroll records" means those not submitted on the basis set forth in the District contract and the Labor Compliance Program;
4. "Inadequate payroll records" are any one of the following:
 - a. A record lacking the information required by Labor Code Section 1776;
 - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;

- c. A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus.

C. Withholding for Violation of the Requirement to Pay Prevailing Wages

- 1. "Amount equal to the underpayment" is the total of the following determined by payroll review, audit or admission of the contractor or subcontractor.
 - a. The difference between the amounts paid to Workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000 et seq.;

- b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8, CCR Section 16000 et seq. and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid.
 - c. Estimated amounts of “illegal taking of wages,” and
 - d. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.
- 2. Provisions relating to the penalties under Labor Code Sections 1775 and 1813;
 - a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the Los Angeles Unified School District on whose behalf the contract is awarded, forfeit not more than Fifty Dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.

In situations involving overtime, the Contractor shall, as an additional penalty to the Los Angeles Unified School

District on whose behalf the contract is made or awarded, forfeit Twenty-Five Dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day, and 40 hours in any one calendar week (Monday through Friday) in violation of the provisions of Section 1813 of the Labor Code. The Los Angeles Unified School District shall take cognizance of all violations of Section 1813.

- c. Pursuant to Labor Code Section 1777.5, contractors and subcontractors are required to employ registered apprentices on public works projects. Each contractor and subcontractor shall keep an accurate payroll record relative to apprentices, per Section 1776 of the Labor Code. The contractor or subcontractor that violates Sections 1775, 1777.5 and 1777.7 of the Labor Code shall forfeit as a civil penalty the sum of Fifty Dollars (\$50) for each calendar day of non-compliance.

D. Forfeitures Requiring Approval by the Labor Commissioner

1. "Forfeitures" are the amounts of unpaid penalties and wages assessed by the Los Angeles Unified School District for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both.
2. "Failing to pay the correct rate of prevailing wages" means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Program, and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code Sections 1742, and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (Sections 17201 through 17270). Regardless of what is defined as prevailing "wages" in contract terms, noncompliance with the following are failures to pay prevailing wages:
 - a. Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in Title 8 CCR Section 16000 and Labor Code Section 1771.

- b. Payroll records required by Labor Code Section 1776.
- c. Labor Code Section 1777.5, but only insofar as the failure consisted of paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program.
- d. Labor Code Section 1778, Kickbacks.
- e. Labor Code Section 1779, Fee for registration.
- f. Labor Code Sections 1813, 1815, and Title 8 CCR Section 16200(a)(3)(F) overtime for work over 8 hours per day, Monday through Friday, and 40 hours in any one week (Monday through Friday). All work performed on Saturday, Sunday, and/or a holiday shall be paid pursuant to the prevailing wage determination.

E. Determination of Amount of Forfeiture by the Labor Commissioner

1. Where the LAUSD Labor Compliance Program requests a Determination of the amount of Forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:
 - a. The deadline by which contract acceptance or filing of a notice of completion, under Labor Code Section 1775, plus 180 days, will occur;
 - b. Any other deadline which if missed would impede collection;
 - c. Evidence of violation in narrative form;
 - d. Evidence that an “audit” or “investigation” occurred;
 - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation, or that any violation was caused by mistake or inadvertence, before the forfeiture was sent to the Labor Commissioner and the contractor either did not do so, or failed to convince the awarding body of its position;

- f. Where the LCP of the awarding body seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor has unsuccessfully contended that the cause of violation was a mistake or inadvertence, a short statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775;
- g. Where the LCP of the awarding body seeks only wages or a penalty less than \$50 per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a mistake or inadvertence, then the file should include the evidence as to the contractor's knowledge of its obligation, including the Program's communication to the contractor of the obligation in the bid invitations, at the pre-job conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amount, pursuant to Labor Code Section 1775;
- h. The previous record of the contractor in meeting its prevailing wage obligations.

2. The file or report shall be served on the Labor Commissioner not less than 30 days before the final payment or, if that deadline has passed, not less than 180 days following the filing of the Notice of Completion as long as funds remain in the contract.
3. A copy of the file or report shall be served on the contractor, any affected subcontractor and the surety, at the same time as it is sent to the Labor Commissioner.

The Los Angeles Unified School District may exclude from the documents served on the contractor/subcontractor or surety, copies of documents secured from these parties during an audit, investigation, or meeting if those documents are clearly referenced in the file or report.

4. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty, and/or wages due.
5. The determination of the forfeiture by the Labor Commissioner is effective on the following date for Labor Compliance Programs having **Final Approval** pursuant to Section 16427 of the California Code of Regulations; on the date the Labor Commissioner serves by first class mail on the Los Angeles Unified School District and on the

contractor, an endorsed copy of the proposed forfeiture, or a drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor is effective if made on the last address supplied by the contractor in the record.

The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 20 days of receipt of the proposed forfeiture or no more than 180 days after the notice of completion has been filed.

F. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the Los Angeles Unified School District shall deposit penalties and forfeitures into its General Fund.
2. Where collection of fines, penalties or forfeitures results from court action to which the Labor Commissioner and the Los Angeles Unified School District are both parties, the fines, penalties or forfeitures shall be divided between the

General Funds of the State and the Los Angeles Unified School District, as the court may decide.

3. All amounts recovered by suit brought by the Labor Commissioner and to which the Los Angeles Unified School District is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code 1775 and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who shall handle such wages and benefits in accordance with Labor Code Section 96.7.

G. Debarment Policy

It is the policy of the Los Angeles Unified School District that the public works prevailing wage requirements set forth in the California Labor Code, Section 1720-18961, be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any

public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the labor code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

SECTION VII.

Appeals of a Labor Compliance Program

Enforcement Action

A. Appeal Process

A contractor may appeal the result of a Labor Compliance Program enforcement action by serving a "Request for Review" on the LCP who will then forward the request to the Director of the Department of Industrial Relations. Such notice must be served within 60 days of the first date the contractor was served by the LCP with a "Notice of withholding of Contract Payments" which has been approved by the Labor Commissioner.

A contractor may appeal an enforcement action by a political subdivision pursuant to Labor Code Section 1742 and 1742.1 to the Director of the Department of Industrial Relations. The decision to hold a hearing on the appeal is within the sole discretion of the Director of the Department of Industrial Relations. The Director may appoint a hearing officer to review the record, conduct a hearing and recommend a

decision. The Director of the Department of Industrial Relations shall make the final decision on the appeal.

Upon receipt of a copy of the "Request for Review," the LCP shall immediately forward to the Director of the Department of Industrial Relations a Notice of Transmittal, a full copy of the Request, a copy of the Notice of Withholding of Contract Payments and the audit. The contractor and/or subcontractor and surety shall be provided a copy of the Notice of Transmittal and all attachments as well as a copy of the Prevailing Wage Hearing Regulations.

In accordance with Labor Code Section on 1742, the contractor or subcontractor shall be provided an opportunity to review the evidence to be utilized by the LCP at the hearing within 20 days of receipt of the written request.

The Director of the Department of Industrial Relations may request a supplemental report from the Los Angeles Unified School District on the activities of the Labor Compliance Program. This report will be an update of the Annual Report that is required pursuant to Section 16431 of the Final Regulations (Title 8, Group 4, Article 1) and which is discussed in Section X of this LCP at page 44.

**B. Determination and Ruling on the Appeal by the
Department of Industrial Relations**

Upon completion of the hearing, the Director of the Department of Industrial Relations shall have 45 days in which to render a decision.

Within 15 days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The Hearing Officer's ruling on the appeal shall be the final decision of the Director from which any party may seek reconsideration, modification or judicial review within 15 days following its receipt. Within 45 days following service of the decision, any affected contractor or subcontractor may seek review of the decision by filing a writ of mandate with the appropriate Superior Court pursuant to 1094.5 of the Code of Civil Procedure.

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

SECTION VIII.

Priority Distribution of Forfeited Sums

A. Withholding of Forfeited Sums

Pursuant to Labor Code Section 1727, it shall be the policy of the Los Angeles Unified School District that prior to making payment to the prime contractor of monies due under any contract for public works, the District shall withhold and retain from the prime contractor's account all amounts which have been forfeited pursuant to any stipulation under said contract for public works. But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by the School District.

B. Disposition of Forfeited Sums

1. The prevailing wage recovery process of this Labor Compliance Program is established pursuant to Labor Code Section 1775 which provides that out of any funds withheld, recovered, or both, there shall first be paid the

amount due each worker notwithstanding the filing of any Stop Notice by any person pursuant to Civil Code, Section 3179, et seq. Thus, all workers employed on the public works project who are paid less than the prevailing wage rate shall have **PRIORITY** over all Stop Notices filed against the prime contractor.

2. In the event that there are “insufficient funds” available in the prime contractor’s account to pay the total amount of prevailing wage violations and penalty amounts due, the unpaid prevailing wages shall have **PRIORITY STATUS** and must be paid first, pursuant to Labor Code Section 1775.

Furthermore, if insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all workers affected; and all penalties shall be deposited in the General Fund of the Los Angeles Unified School District.

LOS ANGELES UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM

SECTION IX.
OUTREACH ACTIVITIES

To ensure the successful implementation of the District's Labor Compliance Program, there shall be several outreach activities initiated and maintained.

A. Providing Information to the Public

The Labor Compliance Coordinator of the Facilities Contracts shall be responsible for communication and outreach activities relative to public information on the District's Labor Compliance Program:

1. Regular presentations to contractors at all District Job Walk Meetings (Pre-Bid conferences) and Job Start Meetings (Pre-Job conferences);
2. Ongoing communication via correspondence and with workers at District job sites when review of the certified

payroll records reveals the possibility of prevailing wage violations.

3. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the District. Periodic meetings with Labor organizations and with Work Preservation representatives/volunteers.

B. Inservicing Management on the Labor Compliance Program

The Labor Compliance Program shall provide ongoing management inservicing and workshops for the officials of the Facilities Services Division, Business Services Division, Accounting & Disbursements Division and District legal staff relative to the terms, requirements and administration of the Labor Compliance Program.

1. Facilities Services Division
 - a. New Facilities
 - b. Existing Facilities
 - c. Real Estate Branch
 - d. Maintenance and Operations Branch
 - e. Facilities Contracts Administration
 - f. Facilities Support Services

- 2. Business Services Division
- 3. Accounting & Disbursements Division
 - a. Accounts Payable Section
 - b. General Accounting Branch
- 4. Office of the General Counsel

LOS ANGELES UNIFIED SCHOOL DISTRICT

LABOR COMPLIANCE PROGRAM

SECTION X.

ANNUAL REPORTS

**A. Annual Report on Prevailing Wage Monitoring to the
LAUSD Superintendent and School Board**

The Labor Compliance Program shall submit to the LAUSD Superintendent and School Board an Annual Report on prevailing wage monitoring which will include the following information:

1. Progress report on the implementation of the LCP.
2. Summary of activities during the school year:
 - a. Monitoring activities
 - b. Record keeping activities
 - c. Labor Code violations identified and reported to DLSE.
 - d. Statistical analysis of the prevailing wage violations on District construction projects during the school year.

- e. Summary of LCP outreach activities for the year.

B. Annual Report on the LAUSD Labor Compliance Program to the Director of the Department of Industrial Relations

The LAUSD shall submit to the Director of the Department of Industrial Relations an Annual Report on the operation of its LCP within 60 days after the close of its fiscal year, or accompany its request for an extension of initial approval, whichever comes first. The Annual Report shall contain, at the minimum the following information:

1. Number of construction contracts awarded, and their total value;
2. The number, description, and total value of construction contracts awarded which were exempt from the requirement of payment of prevailing wages pursuant to Labor Code Section 1771.5(a);
3. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates; the total

amount withheld from money due to the contractors; and
the total amount recovered by action in any court of
competent jurisdiction;

4. A summary of penalties and forfeitures imposed and
withheld, or recovered in a court of competent jurisdiction;
and
5. A special summary of all audits that were conducted upon
the request of the Director of the Department of Industrial
Relations.

Copies of the required Annual Report on the LAUSD Labor
Compliance Program (LCP) to the Director of the Department
of Industrial Relations will be distributed to the Superintendent
and School Board of the Los Angeles Unified School District.

LOS ANGELES UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM

ATTACHMENTS

This section contains the attachments to the Labor Compliance Program of the Los Angeles Unified School District.

ATTACHMENT A
LOS ANGELES UNIFIED SCHOOL DISTRICT
LABOR COMPLIANCE PROGRAM
CHECKLIST OF LABOR LAW REQUIREMENTS TO
REVIEW AT JOB START MEETINGS

(Pursuant to Section 16430 of the Labor Code)

The federal and state labor law requirements applicable to the contract are composed of but not limited to the following:

1. Payment of Prevailing Wage Rates

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract. The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any

rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project under Labor Code Section 1777.5;

3. Penalties

There are penalties required for contractor/subcontractor failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775; 1777.7 and 1813;

4. Certified Payroll Records

Under Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day

and each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to Labor Code Section 1776;

Each contractor and subcontractor shall submit its certified payroll record to the Los Angeles Unified School District on a weekly basis. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated: "No work" for that week.

Under Labor Code Section 1776(g) there are penalties required for contractor/subcontractor's failure to maintain and submit copies of certified payroll records on request.

5. Nondiscrimination in Employment

There exist prohibitions against employment discrimination under Labor Code Sections 1735 and 1777.6, the Government Code, the Public Contracts Code, and Title VII of the Civil

Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunity practices for women and minorities as delineated below:

a. Equal Employment Poster

The Equal Employment Poster shall be posted at the Job Site in a conspicuous place, available to employees and applicants for employment, and shall remain posted for the duration of the project.

6. Kickbacks Prohibited

Contractors and subcontractors are prohibited from accepting, taking wages illegally or extracting “kickback” from employee wages under Labor Code Section 1778;

7. Acceptance of Fees Prohibited

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works contracts pursuant to Labor Code Section 1780;

7. Listing of Subcontractors

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to Government Code Section 4100 et seq.;

9. Proper Licensing

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractor License Law found at Business and Professions Code Section 7000 et seq.

10. Unfair Competition Prohibited

Contractors/Subcontractors are prohibited from engaging in unfair competition as specified under Business and Professions Code Section 17200 to 17208;

11. Workers Compensation Insurance

Labor Code Section 1861 requires that contractors and subcontractors be insured properly for Workers Compensation.

12. OSHA

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

In accordance with federal and state laws and with District contract documents, the undersigned prime contractor wishes to assure the Los Angeles Unified School District that it intends to comply with the above-referenced labor law requirements, fully understanding that failure to comply with the above requirements may subject it to penalties as provided above.

For the Contractor:

For the Los Angeles
Unified School District:

(Signature)

(Signature)

(Date)

(Date)

Prime Contractor

Project Name

ATTACHMENT B
LOS ANGELES UNIFIED SCHOOL DISTRICT
FACILITIES SERVICES DIVISION
FACILITIES CONTRACTS
LABOR COMPLIANCE PROGRAM

AUDIT RECORD FORM

(For Use With CCR Section 16432 Audits)

An audit record is sufficiently detailed to “verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2” when the audit record displays that the following procedures were accomplished:

1. Audits of the obligation to secure worker’s compensation means demanding written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers’ Compensation Insurance Rating Bureau;
2. Audits of the obligations to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public works as to: whether

contract award information was received, including an estimate of journeyperson hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts sent by the contractor or subcontractor to it for the training trust, or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade as being paid less than the journeyperson rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;

3. Audit of the obligation to pass through amounts made part of the bid for apprenticeship training contributions, to either the training trust or the California Apprenticeship Council, means asking for copies of checks sent, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of cancelled checks;
4. Audits of “illegal taking of wages” means inspection of written authorizations for deductions (listed in Labor Code Section 224) in the contractor or subcontractor’s files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of several employees as to any payments not shown on the wage deduction statements;

5. Audits of the obligation to keep records of working hours and pay not less than required by Title 8 CCR Section 16200(a)(3)(F) for hours worked in excess of 8 hours are the steps for review and audit of Certified Weekly Payrolls under Title 8 CCR Section 16432;
6. Audits of the obligations to pay the prevailing per diem wage, means such steps for review and audit of Certified Weekly Payrolls which will produce a report covering compliance in the areas of:
 - A. All elements defined as the “General Prevailing Rate of Per Diem Wages” in Title 8 CCR Section 16000, which were determined to be prevailing in the Director’s determination which was in effect on the date of the call for bids, available in its principal office and posted at the public works job site;
 - B. All elements defined as “Employer Payments to Workers” set forth in Section 16000 of these regulations, which were determined to be prevailing in the Director’s Determination which was in effect on the date of the call for bids, and pursuant to Labor Code Section 1773.2 was to be specified in the call for bids, made available in its principal office and posted at the public works job site.